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May 25, 2023

VIA ECF

Honorable Pamela K. Chen, United States District Judge
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States v. McMahon, et al.*
Docket No. 21-cr-265

Dear Judge Chen:

As Your Honor is aware, this Firm represents defendant Michael McMahon in the above-captioned matter. Pursuant to the schedule set by the Court in its April 17, 2023 Text Order, the Government filed its in limine motions on May 1, 2023; the Defendants responded, again per the Court's Order, on May 15, 2023. These motions will, presumably, be discussed by the Court and ruled upon at the Final Pretrial Conference in this matter, scheduled for May 30, 2023.

Meanwhile, on May 9, 2023, the Government filed a letter seeking to preclude cross-examination of certain Government witnesses with regard to specific subject matters; [REDACTED]

[REDACTED] For many, if not all, of those witnesses, Mr. McMahon does not now know whether he will be cross-examining at all, let alone seeking to challenge the credibility of those witnesses, who have little to say about Mr. McMahon's actions,

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or most significantly, whether he knew that he was acting on behalf of the Chinese Government, as is alleged in Counts 1 and 2 of the Superseding Indictment. Accordingly, the Government's request with regard to those matters is premature, and the Court should await events at trial to decide them, if and when they do arise. Meanwhile, Mr. McMahon will certainly not open on them, or otherwise raise these issues without addressing them with the Court and counsel in advance, whether at sidebar or at the beginning or end of the trial day.

That said, Mr. McMahon, while he is not certain he will do so, wishes not to waive, and thus specifically seeks to reserve, his right to, in an appropriate manner, include in this presentation

[REDACTED]

More significantly from Mr. McMahon's perspective, his defense, as the Government and the Court are aware from prior proceedings in this matter, is that he understood that his investigative actions were for the purpose of assisting a Chinese construction company which had been the victim of an offense in China, to recover its resulting losses, [REDACTED]

[REDACTED]. The reasonableness of Mr. McMahon's belief in that regard is obviously [REDACTED], which accordingly has a "tendency to make a fact more or less probable than it would be without the evidence" and is a fact "of consequence in determining the action." Fed. R. Evid. 401; *see also United States v. White*, 692 F.3d 235, 246 (2d Cir. 2012) ("Evidence is relevant when 'it has any tendency to make a fact more or less probable than it would be without the evidence,' Fed. R. Evid. 401, and, unless an exception applies, all '[r]elevant evidence is admissible,' Fed. R. Evid. 402."). To be clear, [REDACTED]

[REDACTED]

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Accordingly, while Mr. McMahon is continuing to consider whether he wishes to use [REDACTED] in his defense, he will be prepared to address this issue further at the Final Pretrial Conference scheduled for Tuesday, May 30, 2023. He therefore writes today only by way of advising the Court and counsel of his current position with regard to that one aspect of the Government's May 9 letter. We look forward to discussing it further at the appropriate time.

Respectfully submitted,

s/ Lawrence Lustberg
Lawrence S. Lustberg

cc: All counsel of record (via ECF)